

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 CAPITOL MALL, 17TH FLOOR
SACRAMENTO, CALIFORNIA 95814

AMENDED TEXT OF REGULATION

File No. RH-01-017313
December 2, 2002

COMMISSIONER'S REPORT ON UNDERSERVED COMMUNITIES

Section 2646.6 is amended to read as follows:¹

§2646.6. Commissioner's Report on Underserved Communities.

Definitions

For the purpose of these regulations, the following terms are construed as defined herein:

"Insurer" means those carriers admitted to transact the business of insurance in California and the California Fair Access to Insurance Requirements (FAIR) Plan.

"Underserved Community" means those communities which the Commissioner has determined are underserved as set forth in the "Commissioner's Report on Underserved Communities".

(a) Each insurer writing ~~in excess of ten million dollars~~ in any one of the lines of insurance set forth in Section 2646.6(b)(1)(A) through (D) ~~(H)~~ below, *with the exception of umbrella, excess or reinsurance coverages*, shall compile and maintain, *by experience year* the information required by this section for that line of business, on or before March 1 of every year; ~~beginning with calendar year 1997~~, each insurer writing the coverages listed in (b)(1) below shall file a Community Service Statement ~~on a computerized medium as specified in the Department of Insurance Statistical Plan, dated June 2, 1995~~, with the Department of Insurance's Statistical Analysis Bureau in Los Angeles. The Community Service shall contain a verification of an executive officer of the insurer, under penalty of perjury under the laws of the State of California, that the information contained therein is true and correct.

(b) *Such information shall be compiled and maintained in a manner which will allow the insurer to report the information to the Commissioner* ~~insurer's Community Service Statement shall set forth, for the reporting period which shall consist of the calendar year ending on the immediately preceding December 31, for each Zone Identification Program ("ZIP") code in every county in California in which it the insurer sells insurance or maintains agents:~~

¹ Amendments to the text of the regulation as originally proposed on December 28, 2001 were indicated via underline (additions) and ~~strikeout~~ (deletions). Additional changes to the text of the regulation are indicated via double underline (new additions) and ~~double strikeout~~ (new deletions). Text that was stricken in the December 28, 2001 proposed amendments, which the Commissioner now proposes to retain is in **bold underlined** text.

(1) *Premium Written & Earned; Exposure Written & Earned; Premiums, and the total number of exposures new, exposures canceled and exposures non-renewed, stated separately for the following coverages:*

- (A) private passenger automobile liability (~~excluding~~ *including* policies issued through the California Automobile Assigned Risk Plan);
- ~~(B) private passenger automobile physical damage;~~
- (~~C~~)(B) homeowners multiple peril (~~excluding~~ *including* policies issued through the California FAIR Plan);
- ~~(D)~~(C) commercial multiple peril, by ZIP code for the location of individual risks (~~excluding~~ policies for which the annual premium is more than \$7,500);
- ~~(E) commercial automobile liability (excluding policies issued through the California Automobile Assigned Risk Plan and excluding policies for which the annual premium is more than \$7,500);~~
- ~~(F) commercial automobile physical damage (excluding policies for which the annual premium is more than \$7,500);~~
- ~~(G)~~(D) fire (*commercial and personal lines fire coverages should be maintained and compiled in such a manner as to allow them to be reported separately*) (~~excluding~~ *including* policies issued through the California FAIR Plan) (~~as specified in the Department of Insurance Statistical Plan, dated June 2, 1995~~);
- ~~(H) liability other than automobile (excluding professional liability coverages and excluding all commercial policies for which the annual premium is more than \$7,500).~~

(2) *the Community Service Statement shall contain by service performed at each office, the number of service offices maintained in the ZIP code during the reporting period; (For purposes of this section, "service" means claims service, marketing or and sales service.) Where more than one service is performed at an office, the insurer shall categorize the office based upon the service or services provided at that office.*

(3) the number of independent, employed or captive agents or agencies ~~and the number of employed or independent claims adjusters maintaining offices (including home offices)~~ in the ZIP code during the reporting period;

To be counted for purposes of this section, an office must be open to the general public no fewer than 37.5 hours per week at least 50 weeks per year. A new office opened at any time during the reporting period shall be counted if it has been open at least 60 consecutive business days during the reporting period. An office closed at any time during the reporting period shall be counted unless it has been closed for more than 60 consecutive business days during the reporting period.

(4) for an insurer distributing through direct solicitation, the number of direct mail ~~or~~ and telephone solicitations for new insurance business made during the reporting period to addresses in the ZIP code;

(5) the number of ~~agents-agencies and claims adjusters~~ maintaining offices in the ZIP code during the reporting period who identified themselves as conversant in a language other than English, listed by languages as specified *below*: ~~in the Department of Insurance's Statistical Plan, dated June 2, 1995.~~

(1) *Spanish*

(2) *Chinese*

(3) *Japanese*

(4) *Filipino*

(5) *Korean*

(6) *Vietnamese*

(7) *Other than English (includes those above and those not listed)*

(6) ~~The~~ the race or national origin, and gender, of each ~~applicant~~ *policyholder* who is a natural person, as provided by the ~~applicant~~ *policyholder* on a separate, detachable form that refers to the application. The form shall state that this information is requested by the State of California in order to monitor the insurer's compliance with the law, that the ~~applicant~~ *policyholder* is not required to provide this information but is encouraged to do so, and that the insurer may not use this information for underwriting or rating purposes. ~~A sample of this form shall be included in the Department of Insurance's Statistical Plan, dated June 2, 1995. The Department's form is available on the Department's website, at www.insurance.ca.gov.~~ No such information shall be used for purposes of underwriting or rating any applicant.

For purposes of this section, race or national origin means one of the following:

(A) American Indian or Alaskan Native

(B) Asian or Pacific Islander

(C) African-American

(D) Latino

(E) White

(F) Other

(G) Information not provided by ~~applicant~~ or *policyholder*.

~~(7) The number of applications received for each line of insurance as listed in (b)(1) above.~~

~~(8) the number of applications for which the insurer declined to provide each of the coverages listed in (b)(1) above.~~

(c) The Community Service Statement shall be subject to California Insurance Code section 1861.07 and the Commissioner shall, every year as soon as the information is available, issue the Commissioner's Report on Underserved Communities which will report those communities within California, designated by ZIP code, that the Commissioner finds to be underserved by the insurance industry. A community shall be deemed to be underserved by the insurance industry if the Commissioner finds:

- (1) (A) the proportion of uninsured motorists is ten percentage points above the statewide average as reflected in the most recent Department of Insurance statistics regarding the statewide average of uninsured motorists; and
- (B) the per capita income of the community, as measured in the most recent U.S. Census, is below the fiftieth percentile for California; and
- (C) the community, as measured in the most recent U.S. Census, is predominately minority. Predominately minority community can be quantified as any community that is composed of two-thirds or more minorities as those groups are defined in subsection (b)(6)(A) through (D) herein; or

(2) the proportion of uninsured businesses or residences is ten percentage points above the statewide and/or Standard Metropolitan Statistical Area ("SMSA") average as determined by the Commissioner following a public hearing convened for the purpose of determining the number of uninsured businesses or residences in this state.; or

~~(3) — members of the community have contacted three or more agents or companies directly and have been declined for insurance for which they were ready, willing, able, and qualified to purchase.~~

~~In making these findings, the Commissioner may rely upon the reports of insurers, agents, brokers, policyholders, applicants, or consumers. The Commissioner may, but is not required to, conduct a survey of the community or of insurers.~~

~~(d) — Any insurer declining to provide coverage to any applicant in any underserved community for any of the coverages listed in (b)(1) shall provide to the applicant a written statement specifying the reason(s) the insurer declined the application. Any insurer subject to California Insurance Code sections 657 and/or 658 shall provide a written statement of reason(s) as required by that section. For all other applications, a written statement specifying the reason(s) the insurer declined the application shall be provided to the applicant within 20 business days of the date of the application. The statement shall include the toll-free telephone number for the Department of Insurance Consumer Hotline and shall comply with other Department of Insurance regulations in effect regarding insurers' maintenance of toll free numbers for the purpose of providing telephone quotations to consumers. A copy of the statement provided to the applicant shall be retained for audit by the Commissioner for a period of five years from the date of issuance. The insurer must maintain declination files for a period of five years.~~

~~(d)(e)~~ The Commissioner's Report on Underserved Communities shall list for each specific insurance company doing business in California:

- (1) the number and percentage of total exposures the company has in force insuring risks in the

underserved communities and in all other communities, stated separately by line as listed in (b)(1) above;

(2) the number and percentage of offices maintained in the underserved communities and in all other communities;

(3) for an insurer distributing principally through means other than direct solicitation, the number and percentage of its agents maintaining offices in the underserved communities and in all other communities;

~~To be counted for the purposes of this section, a office must satisfy the requirements as listed in the second paragraph of (b)(3) above.~~

~~(4) for an insurer distributing principally through direct solicitation, the number and percentage of direct mail and telephone solicitations for new insurance business made to addresses in the underserved communities and in all other communities.~~

~~(e) After properly noticed hearing is conducted in accordance with the Insurance Code Sections 1861.08 et seq., with the Commissioner having all powers granted therein, any insurer failing to comply with the provisions of these sections will be subject to a fine of five thousand dollars (\$5,000) per day until the insurer has met compliance, and/or the suspension of the insurer's Certificate of Authority for not more than one year.~~

(f) The remedies in this section are in addition to any other remedy available to the Commissioner or to any other person.

~~2646.7 Strategic Plans for Underserved Communities.~~

~~(a) Any insurers subject to these regulations may elect to submit a Strategic Plan for Underserved Communities (SPUC or "Plan") in lieu of compliance with CCR Section 2646.6.~~

~~(b) Any insurer submitting a Plan shall submit the Plan to the California Department of Insurance, Legal Division, Rate Enforcement Bureau, San Francisco, California, Attention: Legal Support Supervisor.~~

~~(c) All such Plans shall be maintained in a Legal Division public file.~~

~~(d) All such Plans shall be submitted to the Commissioner for review.~~

~~(e) Every Plan submitted to the Commissioner by an insurer for approval subject to these regulations shall set forth the following:~~

(1) The name of the insurer submitting the Plan;

(2) The insurers National Association of Insurance Commissioners identification number;

(3) A description of the Underserved Communities which are the subject of the Plan, including, but not limited to, reference to the Commissioner's Report on Underserved Communities as described in Section 2646.6, of the California Code of Regulations;

~~(f) — Every Plan submitted to the Commissioner by an insurer for approval subject to these regulations shall set forth, in any combination, the following:~~

- ~~(1) — A description of how the Plan will increase insurance underwriting in the Underserved Communities;~~
- ~~(2) — A description of how the Plan will foster a long-term business relationship among consumer representatives, community leaders and insurance industry corporation representatives in the Underserved Communities;~~
- ~~(3) — A description of how the Plan will increase the Underserved Communities' access to insurance products;~~
- ~~(4) — A description of what effect the Plan will have on the level of agent appointments in the Underserved Communities;~~
- ~~(5) — A description of what effect the Plan will have on the level of investment in the Underserved Communities;~~
- ~~(6) — A description and goals for any loss prevention programs which are to be undertaken by the insurer in the Underserved communities in connection with the Plan;~~
- ~~(7) — A description and goals for any consumer education programs which are to be undertaken in the Underserved Communities by the insurer in connection with the Plan;~~
- ~~(8) — A description and goals for any community incentive programs which are to be undertaken in the Underserved Communities by the insurer in connection with the Plan;~~
- ~~(9) — A description and goals for any additional programs which are to be undertaken by the insurer in the Underserved Communities in connection with the Plan.~~

~~Section 2646.8 — Submission of Evidence Demonstrating an Existing Presence in Underserved Communities~~

- ~~(a) — Any insurer subject to these regulations may elect to submit to the Commissioner Evidence Demonstrating An Existing Presence in Underserved Communities ("Evidence") in lieu of compliance with CCR Section 2646.6 herein as follows:~~
- ~~(b) — Any insurer submitting Evidence Demonstrating an Existing Presence in Underserved Communities shall submit all such Evidence to the California Department of Insurance, Legal Division, Rate Enforcement Bureau, San Francisco, California, Attention: Legal Support Supervisor.~~
- ~~(c) — All such Evidence shall be maintained in a Legal Division public file.~~

~~(d) — All such Evidence shall be submitted to the Commissioner for review.~~

~~(e) — All such Evidence shall contain the following information:~~

~~(1) — The name of the insurer submitting the Plan;~~

~~(2) — The insurers National Association of Insurance Commissioners identification number;~~

~~(3) — A description of the Underserved Communities which are the subject of the Evidence submitted;~~

~~(f) — All such Evidence shall set forth any combination of the following:~~

~~(1) — Data which indicates the insurer's current level of underwriting in the Underserved Communities;~~

~~(2) — Information which indicates the insurer's current business relationships with consumer representatives and community leaders in the Underserved Communities;~~

~~(3) — Data which indicates the Underserved Communities' current access to the insurer's products;~~

~~(4) — Data which indicates the insurer's current level of agency appointments in the Underserved Communities;~~

~~(5) — Information which indicates the insurer's current level of investment in the Underserved Communities;~~

~~(6) — A description of any loss prevention programs currently undertaken by the insurer in the Underserved Communities;~~

~~(7) — A description of any consumer education programs currently undertaken by the insurer in the Underserved Communities;~~

~~(8) — A description of any community incentive programs currently undertaken in the Underserved Communities;~~

~~(9) — A description of any additional programs which are currently undertaken by the insurer which demonstrate an existing presence in the Underserved Communities.~~

~~2646.9 — Consumer Participation in the Commissioner's Decision to Accept or Reject a Strategic Plan for Underserved Communities or Evidence Demonstrating an Existing Presence.~~

~~(a) — Within ten (10) calendar days of the Commissioner's receipt of a Plan, the Commissioner shall provide public notification, pursuant to California Insurance Code ("CIC") Section 1861.06, that a Plan has been submitted for review.~~

~~(b) — Interested parties may petition the Commissioner for a public hearing on a submitted Plan or Evidence pursuant to CIC Section 1861.10.~~

~~(c) — A petition for public hearing must be in writing and must be received by the Department within twenty (20) calendar days of the public notification date.~~

~~(d) — A petition of public hearing must contain the name of the carrier submitting the Plan and the Plan title, if any, and shall separately identify and specify the following:~~

~~(1) — the persons on whose behalf the hearing is requested;~~

~~(2) — the specific portion or portions of the Plan which are being challenged;~~

~~(3) — the grounds upon which the challenge is based;~~

~~(4) — the relationship, if any, of the petitioner to the carrier submitting the Plan;~~

~~(5) — any interest of the petitioner in the Plan; any interest or right of the Petitioner which may be affected by the Plan; the legal basis of any interest or right that may be affected by the Plan and~~

~~(6) — a summary of evidence proposed to be offered if a hearing is held; and if appropriate, any proposed changes to the Plan.~~

~~(7) — The Commissioner shall issue a decision granting or denying a hearing within fourteen (14) calendar days of receipt of the petition.~~

~~(8) — Any public hearing requested pursuant to this regulation shall commence no later than thirty (30) calendar days following the Department's receipt of a complete petition.~~

~~2646.10 — Timelines for Commissioner's Review; Procedures for Submission of Corrective Plans or revised Evidence.~~

~~(a) — The Commissioner shall accept or reject all Strategic Plans for Underserved Communities or Evidence Demonstrating an Existing Presence in Underserved Communities submitted pursuant to these regulations within sixty (60) calendar days of the date the Department receives the Plan or Evidence.~~

~~(b) — In no event will the Commissioner issue a decision accepting or rejecting any Plan or Evidence Demonstrating an Existing Presence within thirty (30) calendar days from the date upon which the Commissioner receives the Plan.~~

~~(c) — In the event the Commissioner rejects any Plan or submitted Evidence, the Commissioner will meet with consumer representatives and the insurer within thirty (30) calendar days of the Commissioner's rejection of the Plan to determine whether or not the Plan or any submitted Evidence may be revised to comply with the regulations herein. The Commissioner will accept or reject a revised Plan within twenty (20) calendar days following any meeting convened by the Commissioner to consider revisions to the Plan.~~

~~— NOTE: Authority: Insurance Code Sections 700, 704, 704.7, 1861.08, 1872, 1875.20, 1875.21, 1875.22;~~

~~*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; *Credit Ins. Gen. Agents Assn. V. Payne* (1976) 16 Cal.3d. 651, 656, 128 Cal Rptr. 881, 547 P.2d 993; *Garris v. Carpenter* (1939) 33 Cal. App. 2d. 649, 653, 92 P.2nd 688.~~

~~—Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22, 175.23, 1861.08.—~~

~~Section 2646.11 — Failure to Comply with Provisions of an Accepted Strategic Plan for Underserved Communities or Material Misstatement of Evidence Demonstrating an Existing Presence~~

~~(a) — In the event that the Commissioner determines, subject to a field examination, audit or other departmental review, subsequent to the initial acceptance of a Plan or Evidence Demonstrating an Existing Presence, that the insurer is not complying with the stated goals of the Plan or that the Evidence submitted to the commissioner was materially misstated, the Commissioner shall notify the insurer of such noncompliance with these regulations within sixty (60) calendar days of the Commissioner's discovery of such noncompliance.~~

~~(b) — Upon notice by the Commissioner that an insurer has failed to comply with its accepted Plan or that an insurer has materially misstated submitted Evidence, the insurer shall be required to submit a Corrective Plan, within thirty (30) calendar days of the date of the Commissioner's notification of failure to comply, setting forth the insurer's goals for meeting the terms of the Plan. The Commissioner shall review and accept or reject the Corrective Plan within thirty (30) calendar days of the date of the Corrective Plan's submission.~~

~~(c) — The Commissioner shall evaluate the Corrective Plan pursuant to the provisions of Section 2646.7 herein.~~

~~(d) — Insurers failing to qualify for an exemption from CCR Section 2646.6 pursuant to these regulations shall be required to comply immediately with the provisions of Section 2646.6 for a period of not less than two (2) calendar years beginning January 1 of the year following the Commissioner's determination of noncompliance.~~

~~NOTE: Authority cited: California Insurance Code Sections 12921 and 12926; *CalFarm v. Deukmejian*, 48 Cal.3d 805 (1989); Reference: California Insurance Code Sections 679.71, 1861.02, 1861.03, 1861.05 and 11628.~~